IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14698 of 2004

with

CIVIL APPLICATION No.219 OF 2005

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARTS,SCIENCE AND COMMERCE COLLEGE

Versus

ANIL HIRALAL MISTRY

Appearance:

1. Special Civil Application No. 14698 of 2004

MR DHIRENDRA MEHTA for Petitioner No. 1-2

MR AJ SHASTRI for Respondent No. 1

MR DC DAV for Respondent No. 2

MR SP HASURKAR, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 17/02/2005

ORAL JUDGEMENT

Rule. Learned advocate Shri Shastri waives service of notice of rule on behalf of respondent No.1. Learned advocate Shri Dave waives service of notice of rule on behalf of respondent No.2 and learned AGP Shri Hasurkar waives service of notice of rule on behalf of respondent No.3. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In this petition, the petitioner which is an educational Institution has challenged the order dated 21.4.04 passed by the Gujarat Affiliated Colleges Tribunal in Application No.11/2000 as also the order dated 4.10.04 by which the said Tribunal was pleased to reject the review application of the present petitioner seeking review of the order dated 21.4.04.

3. Respondent No.1 herein had filed Application No.11/00 before the Tribunal. For want of appearance of the advocate of the petitioner, the Tribunal allowed the said application by its order dated 21.4.04. As noted earlier, the attempt of the petitioner to seek review of the said order also failed.

4. It is not in dispute that the order dated 21.4.04 passed by the Tribunal was an ex-parte order. Though it is true that respondent No.1, i.e. original applicant is clamouring for consideration of his application since long, and that on account of non-appearance on the part of the petitioner his application came to be decided by the Tribunal ex parte. However, in the interest of justice, it would be necessary that the Tribunal hears the matter afresh permitting the petitioner to participate in the proceedings. The grounds urged by the petitioner in this petition for non-appearance before the Tribunal are accepted and the petitioner is given one last chance to appear before the Tribunal and oppose the application filed by respondent No.1 herein.

5. For the above purpose, orders dated 21.4.04 and 4.10.04 passed by the Tribunal are quashed and set aside. The matter is remanded to the Tribunal for fresh adjudication after hearing both sides. Since the application of respondent No.1 was filed in the year 2000, Tribunal is requested to give priority consideration and ensure that the same is disposed of as

expeditiously as possible and preferably within a period of four months from the date of receipt of a copy of this order.

6. Pursuant to order dated 3.11.04, the petitioner has deposited an amount of Rs.5,000/- before this Court. The said amount be paid over to respondent No.1 by the Registry.

7. In the result, the petition is allowed to the above extent. Rule is made absolute accordingly.

8. In view of the above order, Civil Application No.219 of 2005 filed by a co-employee of respondent No.1 in the main petition seeking promotion to the same post does not survive. Counsel for the applicant therein states that the applicant would be requesting the Tribunal to consolidate the proceedings filed by him with those filed by respondent No.1. The civil application is also disposed of accordingly.

(Akil Kureshi, J.)

(vjn)